



**OPERATING AGREEMENT
RELATED TO HIGHWAY PROJECTS
BETWEEN
THE BUREAU OF LAND MANAGEMENT, ARIZONA
THE ARIZONA DEPARTMENT OF TRANSPORTATION
AND
THE FEDERAL HIGHWAY ADMINISTRATION, ARIZONA
SUPPLEMENTING
THE
MEMORANDUM OF UNDERSTANDING
NO. AZ-931-0309
DATED APRIL 23, 2003**

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GLOSSARY OF ACRONYMS & TERMS:

- Right of Way
- NEPA

OPERATING AGREEMENT

Related to Highway Projects

BACKGROUND

I. HISTORY

In January 1997, Arizona Department of Transportation (ADOT), Bureau of Land Management (BLM), and Federal Highway Administration (FHWA) held a two-day partnering workshop to begin enhancing and streamlining coordination among the three agencies. A Partnering Charter was developed, and on May 2, 1997, a Memorandum of Understanding (MOU) between the three agencies became effective. The MOU was purposely written as a general “umbrella” agreement with the intent that one or more Operating Agreements would be developed to supplement the MOU. The original MOU has been revised and replaced by MOU No. AZ-931-0309 dated April 23, 2003.

II. PURPOSE

The purpose of this Operating Agreement is to supplement MOU No. AZ-931-0309 dated April 23, 2003, to establish roles, responsibilities, and operating procedures between ADOT, BLM and FHWA relating to highway projects on lands administered by BLM.

III. AUTHORITY

MOU No. AZ-931-0309 dated April 23, 2003 and authorities cited therein.

AGREEMENT

IV. RESPONSIBILITIES

- A. FHWA will be the lead federal agency with the responsibility to comply with the National Environmental Policy Act, as amended (NEPA), National Historic Preservation Act as amended (NHPA), Endangered Species Act as amended (ESA), and other legal requirements for all Title 23 transportation-related projects on land administered by BLM. FHWA will invite, in writing, BLM to be a cooperating agency.
- B. BLM will be the lead federal agency with the responsibility to comply with NEPA, NHPA, ESA, and other legal requirements for the development of all BLM land management plans and amendments and on transportation-related projects without FHWA involvement. BLM will invite, in writing, FHWA and ADOT to be cooperating agencies in developing and amending its land use plans. In the event of a project using Federal-aid funds on a non-transportation related project (i.e. some Transportation Enhancement projects), the BLM Field Office will contact FHWA to discuss the specific roles of each agency.
- C. ADOT will be co-lead agency and will serve as FHWA's agent in the project development process for Title 23 projects.

V. LONG RANGE PLANNING

(RESERVED)

VI. TITLE 23 PROJECTS

In this Operating Agreement, unless the context otherwise requires, “necessary environmental clearances” shall be understood as including compliance with the National Environmental Policy Act, Section 7 of the ESA, Section 106 of the NHPA, and all other pertinent and applicable Federal and State environmental protection laws.

A. Agency Roles

1. As the lead Federal agency for highway projects eligible for funding pursuant to 23 U.S.C. (Title 23), FHWA is ultimately responsible for compliance with NEPA and other necessary environmental clearances. No NEPA decision is required by the BLM for a Title 23 U.S.C. funded highway project unless the proposed action does not conform to BLM’s land use plan for the affected lands. BLM, as federal land manager on public lands, retains responsibility for enforcement of, and compliance with, the Native American Graves Protection and Repatriation Act (NAGPRA) and the Archaeological Resources Protection Act (ARPA). In situations where a land use plan amendment is required, the NEPA analysis and documentation must meet both FHWA and BLM regulatory standards. BLM is the lead Federal agency with respect to development of all BLM land management plans and amendments.
2. Unless otherwise agreed, ADOT serves as agent for FHWA in meeting FHWA’s responsibility for NEPA and other necessary environmental clearances.
3. ADOT Environmental Planning Group (EPG), or its designated consultant, will coordinate with the appropriate BLM Field Office(s) where BLM-administered lands needed for highway purposes are located during the various stages of a highway project.

B. Early Project Coordination

1. Early in the planning and NEPA stages of a Federal-aid highway project on BLM-administered lands, FHWA will send written notification of the project to all affected BLM Field Offices, with a copy to ADOT EPG: (1) inviting BLM to participate as a cooperating agency, (2) requesting that BLM identify known issues and concerns relating to protection of valid existing rights and resources on BLM-administered lands potentially affected by the project, and (3) requesting a determination whether the proposed project is in conformance with BLM land use plans.
2. BLM will provide a written response to FHWA, with a copy to ADOT EPG, in a timely manner, usually within 30 days after receipt of the notification, which:
 - a. acknowledges receipt of the notification;
 - b. verifies whether or not the proposal is in conformance with BLM land use plans;
 - c. states whether or not BLM will be a “cooperating agency with special expertise” or, in the case where a land use plan amendment is required, a “cooperating agency with jurisdiction;”

- d. provides readily available information on wildlife, wildlife habitat, areas where threatened or endangered plant or animal species are known to occur, information on special status or sensitive species of plants or animals, special fencing needs, grazing, cultural resources, valid existing rights, etc.;
 - e. identifies any known unique or special conditions, based on knowledge of existing resources, including any anticipated special protective measures, which may be necessary.
 - f. provides the name, phone number and email address of the designated point of contact (BLM Project Manager); and
 - g. identifies the BLM Serial Number assigned to the project.
3. When more than one BLM Field Office will be affected by the proposed project, a BLM will designate a Lead Office. The assigned BLM Project Manager will send written notification to FHWA, with a copy to ADOT, identifying which office is the BLM Lead Office.
 4. The BLM Project Manager will coordinate with all other BLM Field Offices affected by the project and will provide consolidated responses to ADOT and FHWA on issues affecting BLM-managed lands throughout the life of the project.
 5. The BLM Serial Number, the FHWA Project Number, and the ADOT TRACS Number(s) or Material Site Number will be referenced on all future correspondence relating to the project, whether correspondence is by formal letter, email, or fax transmittal.

C. Development of Environmental Document

1. Before any public/agency scoping meetings are held, BLM, FHWA, and ADOT will meet to identify the primary points of contact for each agency and determine members needed on the Inter-disciplinary (ID) Team. The ID Team will meet on a regular basis to discuss and resolve issues pertaining to (but not limited to) alternatives, methodology, potential mitigation, and levels of analysis. The ID Team will also develop a team partnering charter that identifies the roles and responsibilities of each member.
2. At the beginning of each ID Team meeting, the team will review, modify if necessary, and approve the minutes from the previous meeting. These minutes will serve as the documentation which demonstrates the issues on which the team has, or has not, reached consensus.

3. Every attempt will be made to resolve differences relating to measures BLM may feel are necessary for protection of adjacent BLM-managed lands and resources. If agreement cannot be reached at the lowest level of each organization, the dispute resolution process described in Section VIII of the MOU shall be followed.
4. BLM will have opportunity to formally review the NEPA and engineering documents and provide written comments to FHWA, with copies to ADOT EPG, within the following times (*see attached Illustration 1 [2 pages]*):
 - a. administrative draft of the Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS) - 30 to 45 days after receipt.
 - b. Initial Design Concept Report (DCR) - 30 to 45 days after receipt.
 - c. Draft EA or EIS during the public comment period - 30 days after receipt for an EA, and 45 days after receipt for an EIS.
 - d. administrative final EA or EIS - 30 days after receipt.
5. The BLM Project Manager shall provide FHWA a letter, signed by the BLM Authorized Officer, supporting the findings for inclusion in the Final EA or EIS.
6. Field reviews may be scheduled by ADOT, their consultant, FHWA, or BLM. Review of project submissions, environmental documentation and participation in field reviews provides the opportunity for BLM to identify specific concerns relating to resource issues on BLM-administered lands throughout the entire NEPA process. This will ensure adequate time for all parties to discuss and come to resolution regarding specific mitigation measures to be implemented for the project.
7. ADOT and FHWA will mitigate highway construction impacts to resources on BLM-administered lands in a practical and reasonable manner. Proper highway design, including safety, is the responsibility of ADOT and FHWA. Where conflicts arise in selection of project design features, highway safety will be the overriding factor.
8. Special measures which BLM believes are necessary to protect BLM-administered lands adjacent to but outside the right-of-way will be discussed with the ID Team during the early consultation, environmental analysis, and throughout the design phases of the project. The BLM Project Manager will submit, in writing to ADOT with a copy to FHWA, any special measures determined necessary for protection of BLM-administered lands or resources, along with a rationale for each measure identified. Upon agreement with such protective measures, ADOT will reply, in writing with a copy to FHWA, that such measures will be included in the project design. If ADOT disagrees with the identified measures, ADOT will provide a written response to BLM, with copy to FHWA, stating the rationale for not agreeing to inclusion of the measures in the project design. All such documentation will be included in the Project Reference (see Section D below).

D. Project Reference

Given increased environmental awareness, as well as federal and state government streamlining, the parties recognized the need for a new method of coordinating highway construction project activities. This resulted in the creation of the Project Reference (*Illustration 2*), a cooperative effort of the Arizona Department of Transportation and the

Arizona offices of the Bureau of Land Management and the Federal Highway Administration. The following information provides a brief overview of this new document.

1. Definition:

The Project Reference is designed to:

- a. consolidate project specific documents and information applicable to the appropriation of and construction on BLM-managed lands pursuant to Title 23 U.S.C.
- b. ensure that project partners receive pertinent documents throughout the life of the project; and
- c. be a resource to assist in the preparation of the Plans Specifications and Estimates (PS&E) by ADOT Contracts and Specifications (C&S) Group.

2. Benefits:

- a. Project information is centrally located and readily available to key stakeholders in the project, thereby reducing or eliminating delays to the project caused by confusion, misunderstanding or conflict associated with project design.
- b. Project stakeholders receive pertinent information in a timely and reliable manner.
- c. Efficient use of time, clarity of understanding and positive working relationships are improved.
- d. The ability of team members to successfully execute the project is enhanced.
- e. The public benefits from a better informed government staff with regard to highway projects.

3. Contents:

Not all project-related information will be available when the Project Reference is created, and information will change as the project progresses through the design and implementation phases, each of which occur over a period of several years. When presented at the design kick off meeting, the Project Reference will consist of, at a minimum:

- a. 8 ½ inch x 11 inch 3 ring binder;
- b. Table of Contents;
- c. Purpose (Section 1.1 of the Project Reference);
- d. Project Summary (Section 1.2 of the Project Reference);
- e. Available environmental information to include project specific mitigation measures and copies of all correspondence generated throughout the NEPA process;
- f. Divider tabs;
- g. Copy of current Operating Agreement

4. Implementation:

- a. Creating the Project Reference will be a collective effort of the ADOT Development Group. Development of the Project Reference will begin after completion of the Design Concept Report (DCR) or the final Project Assessment (PA) and the final environmental document.
- b. For projects where a Pre-Negotiations Partnering Meeting is held, the ADOT Project Manager will educate workshop participants about the Project Reference and identify who will create the initial reference notebooks.
- c. The ADOT Project Manager (or Design Consultant) will distribute Project Reference notebooks to the key stakeholders at the Design Kick-Off Partnering Workshop. Key stakeholders are defined as, at a minimum, the BLM Project Manager, ADOT Project Manager, Design Consultant, ADOT District Engineer (2 copies: 1 for the Resident Engineer & 1 for the prime construction contractor, when selected), ADOT Right of Way Coordinator and FHWA Area Engineer. FHWA and BLM will each need only one Project Reference. If it is determined that additional Project References are needed, the responsible party for each agency will make the necessary copies and ensure continued distribution of updated materials within their organization. The ADOT Project Manager (or Design Consultant) will be responsible for providing an up-to-date Project Reference to the representative from ADOT Contracts & Specifications for use as a reference in preparation of the bid package.
- d. Any additional project stakeholder who wants to receive a copy of the Project Reference and subsequent documents and information will put his/her name and contact information on a sign-in sheet at the Design Kick-Off Partnering Workshop. The ADOT Project Manager (or Design Consultant) will distribute a Project Reference to these individuals and add their name to the distribution list for updates throughout the life of the project. The ADOT Project Manager will distribute Project Reference notebooks to ADOT-related stakeholders
- e. The ADOT Project Manager (or Design Consultant) will identify at the design kick off meeting the documents to be generated for inclusion within the Project Reference and the appropriate method of transmitting documents/information to design team members. Project documents and information may be in the form of e-mails, fax or hard copy transmittals, as appropriate. He/she will identify the responsible parties for submission of project related information. The following examples identify types of information which will be transmitted to the key stakeholders and any others who have indicated they wish to be included on the Project Reference distribution list:

Example: ADOT Environmental Planning Group will be responsible for providing copies of documents generated through the NEPA process for inclusion in the Project References distributed at the design kick off meeting, information related to hazardous contamination issues and copies of SHPO concurrence.

Example: BLM Field Office Representative will be responsible for providing baseline information, i.e. information related to valid existing rights such as mining claims, mineral leases and permits, rights-of-way, grazing leases, known locations of habitats for sensitive or T&E wildlife and plant species, big horn sheep lambing grounds etc. and information pertaining to third party ancillary facilities.

Example: ADOT Right of Way Coordinator will be responsible for providing copies of the Arizona State Trust Land approvals and “Special Conditions” information, i.e. cost-to-cure, salvage, right of way contracts on private parcels.

Example: ADOT Resident Engineer will be responsible for providing copies of signed application for the Corps of Engineers permits and agreements reached throughout the development and construction phases of a project.

Example: ADOT Utilities will be responsible for providing information regarding prior rights and any signed agreements resulting from their research.

- f. All stakeholders will be responsible for updating their copy of the Project Reference throughout the development process.
- g. The ADOT Resident Engineer will assume responsibility for the Project Reference at the Construction Partnering Kick-Off Workshop and will provide an updated Project Reference to the prime contractor. At this phase, the prime contractor will be added to the list of project stakeholders and will receive copies of all subsequent documents. Any additional stakeholders who want a Project Reference will put his/her name and contact information on a sign-in sheet at the construction kick-off meeting. The ADOT Resident Engineer will distribute Project Reference notebooks to ADOT-related stakeholders. BLM and FHWA will assume the responsibility for providing Project Reference notebooks and updated information to individuals in their agencies who request that their names be added to the stakeholder list.
- h. Agreements made throughout the development and construction phases of a project will be acknowledged in writing, with concurrence signatures of both ADOT and BLM, and will be transmitted for inclusion within the Project Reference.
- i. The official Project Reference for the project is the one maintained by ADOT’s Project Manager and Resident Engineer.

Any changes to the mitigation measures identified in the Final Environmental Assessment (EA) or Environmental Impact Statement (EIS) must be agreed upon, in writing, by ADOT, BLM and FHWA, and distributed for inclusion in the Project Reference.

E. Project Design

In addition to the opportunities for formal review and comment during the NEPA process discussed above in Section VI.C.4, BLM will also have opportunity for review and comment during the design process as follows:

- 1. during the design kickoff meeting and/or field review;
- 2. at the monthly progress meetings;
- 3. during the 30%, 60%, and 95% plan reviews;
- 4. on any subsequent NEPA re-evaluations or supplemental analysis;

BLM will provide all comments resulting from such reviews in writing to the ADOT Project Manager, with a copy to FHWA.

F. Appropriation Process

1. Request for Appropriation

- a. After completion of NEPA and prior to sending the formal Request for Appropriation to BLM, ADOT will send notification to, preferably via email, the FHWA Realty Officer requesting concurrence that the BLM-administered lands are needed for the project (*Illustration 3 or 4 for linear or material site rights-of-way, respectively*).
- b. The FHWA Realty Officer will reply to ADOT's request, preferably via email, either concurring or not concurring to the determination of public necessity for the project (*Illustration 5 or 6 for linear or material site rights-of-way, respectively*).
- c. ADOT will submit directly to the appropriate BLM Field Office, with a copy to FHWA, the formal Request for Appropriation consistent with 23 C.F.R. Section 710, Subpart F. ADOT will use the standard letter (*Illustration 7 or 8 for linear or material site rights-of-way, respectively*) for requesting appropriation of linear or material site rights-of-way. The Request for Appropriation will identify both the permanent easement and any temporary construction easements (TCE) necessary for the project.
- d. A complete Request for Appropriation will consist of the appropriate letter (*Illustration 7 or 8 for linear or material site rights-of-way, respectively*) accompanied by the following:
 - (1) Reference to the final, approved NEPA document by name and date, for the project, a copy of which will have already been provided to the BLM Project Manager.
 - (2) Right-of-Way Plans for linear rights-of-way; plat maps and mining and reclamation plan for material site rights-of-way;
 - (3) Legal description of the requested permanent right-of-way and separate description of temporary construction areas; and
 - (4) A copy of the email from FHWA to ADOT (*Illustration 5 or 6 for linear or material site rights-of-way, respectively*) concurring that the lands are necessary for the project.
- e. The BLM Project Manager will acknowledge receipt of the formal Request for Appropriation within 30 days, as follows:
 - (1) If the package is incomplete, the BLM Project Manager will send notification, preferably via an email, to ADOT, with copy to FHWA, to state the package is incomplete and identify what is missing.
 - (2) If the package is complete, BLM will follow the procedures in VI.F.2 or 4 below.

2. Agreement to Appropriation

- a. Agreement to the request for appropriation will be in the form of a Letter of Consent (LOC), signed by the BLM Authorized Officer (*Illustration 9 or 10 for*

linear or material site rights-of-way, respectively) in accordance with Section VI.F.3 below.

- b. The LOC will be addressed to FHWA but will be sent directly from BLM to ADOT, with a copy to FHWA. The LOC will cover both the permanent easement and any identified TCEs.
- c. After receipt of the LOC, ADOT will complete the appropriate Highway Easement Deed (HED) (*Illustration 11 or 12 for the form deeds for linear or material site rights-of-way, respectively*) and submit the deed to FHWA for signature. The form deeds specified in Illustrations 11 and 12 have been certified as legally sufficient by legal counsel for ADOT and FHWA and such certifications are on file at ADOT and the FHWA Arizona Division Office. These deeds may be augmented only by insertion of ADOT project and parcel information, BLM reference number, execution dates, 23 U.S.C. appropriation section reference, legal description, signatures and notarization information. Any other additions or modifications to these deeds will require separate certifications of legal sufficiency by legal counsel for ADOT and FHWA in accordance with 23 U.S.C. §§ 107 (d) and 317 and implementing regulations at 23 C.F.R. § 710.601.
- d. After signature by FHWA, ADOT will have the easement deed recorded in the appropriate county or counties, and submit a copy of the recorded deed to the BLM Project Manager and to FHWA Realty Officer.
- e. ADOT will notify BLM in writing, with a copy to FHWA, when TCEs lying outside the permanent right-of-way are no longer needed and request a joint inspection with BLM to coordinate rehabilitation of the TCEs. Upon determination that the TCEs have been rehabilitated to the satisfaction of BLM, a letter acknowledging that the TCEs are no longer part of the appropriation will be signed by the BLM Authorized Officer. The letter will be addressed to FHWA but will be sent directly to ADOT, with a copy to FHWA.
- f. Once appropriated for highway purposes, lands are closed to future location and entry under the General Mining Law.

3. Conditions of Appropriation

All appropriations shall be subject to and conditioned upon compliance with the standard conditions of approval as stated below. The following conditions will not be specifically elaborated in each LOC or HED. However, BLM's consent to the appropriation, and thus the LOC and HED, are wholly contingent upon ADOT and FHWA concurrence to, and conformance with, the following conditions:

- a. All appropriations shall be subject to any additional conditions agreed to, in writing in accordance with this Operating Agreement during the early coordination, environmental analysis, and design phases, whether or not those conditions are specifically carried forward in the request for appropriation or the LOC.
- b. If outstanding valid rights exist on the date of the use authorization, ADOT shall obtain such permission as may be necessary on account of any such rights.
- c. The use right authorized shall terminate 10 years, or sooner if agreed upon, from the date of execution of the HED by FHWA to ADOT in the event construction of a highway or use of the material site has not been started during such period.

- d. The use right authorized is limited to the described right-of-way and the space above and below for federal highway purposes and does not include any rights for non-federal highway purposes.
- e. BLM retains the right to use, or authorize use on, any portion of the right-of-way for non-highway purposes provided such uses would not interfere with ADOT's use of the right-of-way, impair the full use and safety of the highway, or be inconsistent with the provisions of Title 23 U.S.C. and the FHWA regulations issued pursuant thereto. Such use will be authorized only after consultation with, and written concurrence from, ADOT.
- f. BLM may locate information signs conforming to the Manual on Uniform Traffic Control Devices (MUTCD) on portions of the right-of-way outside of clear zone limits, however, such signs shall not be located on the right-of-way of an Interstate System.
- g. Consistent with highway safety standards, ADOT shall:
 - (1). Protect and preserve soil and vegetative cover and scenic and esthetic values on the right-of-way outside of construction limits.
 - (2). Provide for the prevention and control of soil erosion within the right-of-way and on adjacent lands that might be affected by the construction, operation, maintenance, minor rehabilitation, and termination of the highway project.
 - (3). Vegetate and keep vegetated with suitable species all earth cut or fill slopes feasible for re-vegetation or other areas on which ground cover is destroyed where it is deemed necessary prior to completion of the highway and shall maintain terracing, water bars, leadoff ditches, or other preventive works that may be required to accomplish this objective. This provision shall also apply to slopes that are reshaped following slides which occur during or after construction.
- h. No sites for highway operation and maintenance facilities, camps, supply depots, or disposal areas within the right-of-way may be established without obtaining written approval of the BLM authorized officer.
- i. ADOT shall maintain the right-of-way clearing by means of chemicals only after consultation with the appropriate BLM Field Office, specifying the time, methods, chemicals and locations of the right-of-way to be treated.
- j. The provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 242) shall be complied with.
- k. ADOT shall follow the standard procedures contained within the 1973 Department of Interior "Manual of Survey Instruction" in removing, resetting, referencing or otherwise perpetuating the position of any cadastral survey monuments which may be subject to disturbance during construction or maintenance of any highway project.
- l. ADOT and BLM will cooperate in responding to and keeping each other informed of oil and gas and hazardous material spills of mutual concern. Contact for coordination shall be between the ADOT District Maintenance Engineer, the BLM

Field Manager, and Arizona Department of Environmental Quality (ADEQ). Specific contingency plans shall be discussed annually at District and/or State coordination meetings or as needed to facilitate full cooperation. Unless otherwise agreed in writing by supplement to this Operating Agreement or other written instrument, ADOT will respond to emergency response/cleanup for oil and gas or hazardous materials spills **within** the highway right-of-way and will immediately notify BLM of any such incidents. BLM will respond to emergency response/cleanup for oil and gas or hazardous materials spills **outside of the right-of-way but which may impact** the highway project and immediately notify ADOT of such incidents.

4. Disagreement to Appropriation

As a result of the cooperative process developed by FHWA, ADOT and BLM, as documented within the MOU No. AZ-931-0309 dated April 23, 2003 and this Operating Agreement, the parties believe it is highly unlikely BLM would issue a formal disagreement to an appropriation request. However, if such a unique situation were to arise, disagreement to a request for appropriation would be in the form of a letter, signed by the State Director, with supporting documentation clearly substantiating that:

- a. appropriation would be contrary to the public interest;
- b. appropriation would be inconsistent with the purposes for which the BLM-administered lands or minerals are managed; or
- c. FHWA and ADOT will not accept the conditions BLM determines necessary for protection of the BLM-administered land or resources.

5. Appropriation by Operation of Law

If, within four months, BLM has not responded, in writing, to the Request for Appropriation, such land may be considered appropriated by FHWA and transferred to ADOT for the purposes requested. Before exercising this authority, FHWA will notify BLM that it has appropriated the land.

G. Construction

1. During construction, ADOT, as agent for FHWA, will ensure compliance with all such terms and conditions identified in the NEPA document, the LOC, and any special conditions designed to protect the BLM-administered land and its resources to which all parties have agreed. If BLM identifies a situation where it appears there may be non-compliance with such terms and conditions, BLM will work directly with the ADOT Project Manager or Resident Engineer to resolve the issue. BLM will not initiate direct contact with any contractor working for ADOT.
2. If necessary, ADOT, FHWA and BLM will coordinate a joint meeting to resolve differences. Escalation procedures outlined in Section VIII of the MOU will be followed if differences cannot be resolved at the joint meeting between ADOT, BLM and FHWA.
3. The BLM Field Office staff will be given an opportunity to provide input on construction issues during the construction partnering meeting and the weekly construction meetings.

H. Operation, Maintenance, Minor Rehabilitation

1. Operation and maintenance **within a highway easement** includes standard highway-related preservation activities to ensure a continued safe and efficient highway for the public (23 CFR 460, 625, 635, 771). Such activities include, but are not limited to: emergency repair; restoration of surfacing, shoulders, roadsides; restoration or replacement of structures (including bridges); cleaning ditches and cross-drainage; minor (less than 100 feet in length) slope flattening for erosion mitigation, snow removal, sight distance or other safety reasons; controlling brush and roadside vegetation to maintain clear zones, sight distance and to remove hazard trees; slope stabilization and scaling; removal of hazards and other obstructions; preserving and adding traffic control measures to conform with the Manual on Uniform Traffic Control Devices (MUTCD), etc. These activities are approved in the easement and do not require an additional NEPA decision. However, compliance by FHWA, and thus ADOT acting as their agent, with all other applicable laws and regulations is required. BLM, as federal land manager, retains the responsibility for enforcement of, and compliance with NAGPRA and ARPA.
 - a. If any BLM facilities will be impacted by operation or maintenance, ADOT will notify the affected BLM Field Office(s).
 - b. If highway operation or maintenance will require use of BLM-managed lands outside the right-of-way, ADOT will notify the affected BLM Field Office to secure the appropriate authorization prior to commencing the work. If an emergency situation arises where public safety may be at risk, ADOT may proceed without specific BLM authorization and will notify BLM as soon as possible of the situation.
2. Minor rehabilitation **within a highway easement** includes non-standard highway-related operation and maintenance to provide minor upgrades to a highway (23 CFR 625, 635, 771). Such activities include but are not limited to: minor realignment (i.e., straightening dangerous curves); minor widening (adding lane and/or shoulder width); adding auxiliary lanes (passing, turning, climbing, parking, etc.); major (more than 100 feet in length) slope flattening for erosion mitigation, snow removal, sight distance or other safety reasons, etc. If federal funds will be used for any of these activities, additional NEPA by FHWA would be required. A CE may be sufficient in most cases. No NEPA decision or additional authorization by BLM is needed for minor rehabilitation work within a highway easement, however BLM, as federal land manager, retains the responsibility for enforcement of, and compliance with NAGPRA and ARPA.
 - a. If any BLM facilities will be impacted by minor rehabilitation, ADOT will notify the affected BLM Field Office(s) before implementing such activities. BLM facilities may include, but are not limited to, such items as fences, cattle guards, signs, etc.
 - b. If minor rehabilitation will require use of BLM-managed lands outside the right-of-way, ADOT will notify the affected BLM Field Office to secure the appropriate authorization.

I. Abandonment/Relinquishment

ADOT will notify BLM in writing, with a copy to FHWA, when the land transferred for a material site or highway is no longer needed and request a joint inspection with

BLM to coordinate rehabilitation of such land. Upon determination that such land has been rehabilitated to the satisfaction of BLM, a letter acknowledging satisfaction of rehabilitation and stating that such land is no longer appropriated will be signed by the BLM Authorized Officer. The letter will be addressed to FHWA but will be sent directly to ADOT, with a copy to FHWA.

VII. NON- TITLE 23 APPLICATION PROJECTS

(RESERVED)

VIII. MINERALS ISSUES

(RESERVED)

IX. ACCESS TO STATE HIGHWAYS

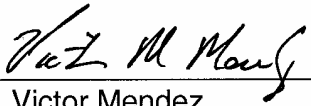
(RESERVED)

X. ADMINISTRATION

- A. This Operating Agreement shall become effective upon signature by all parties and shall continue in effect unless and until it is terminated by written request of one or more of the signatories. This Operating Agreement shall terminate upon agreement of all parties or upon expiration of 60 days after written notice of one or more parties of its intent to terminate, whichever occurs first.
- B. This Operating Agreement may be amended or modified as necessary by mutual consent of all parties upon written notification of such modification, signed and dated by all parties.

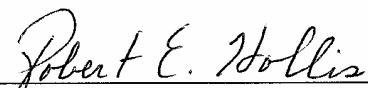
IN WITNESS WHEREOF, the parties hereto have caused this document to be executed by the Director, Arizona Department of Transportation; the State Director, Bureau of Land Management, Arizona; and the Division Administrator, Federal Highway Administration, Arizona, on this 23rd day of April, 2003.

ARIZONA DEPARTMENT OF TRANSPORTATION

BY: 
Victor Mendez
Director

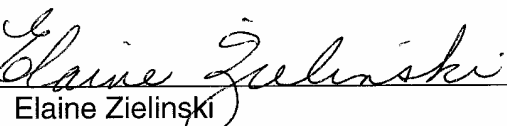
04/23/03
Date

FEDERAL HIGHWAY ADMINISTRATION, ARIZONA

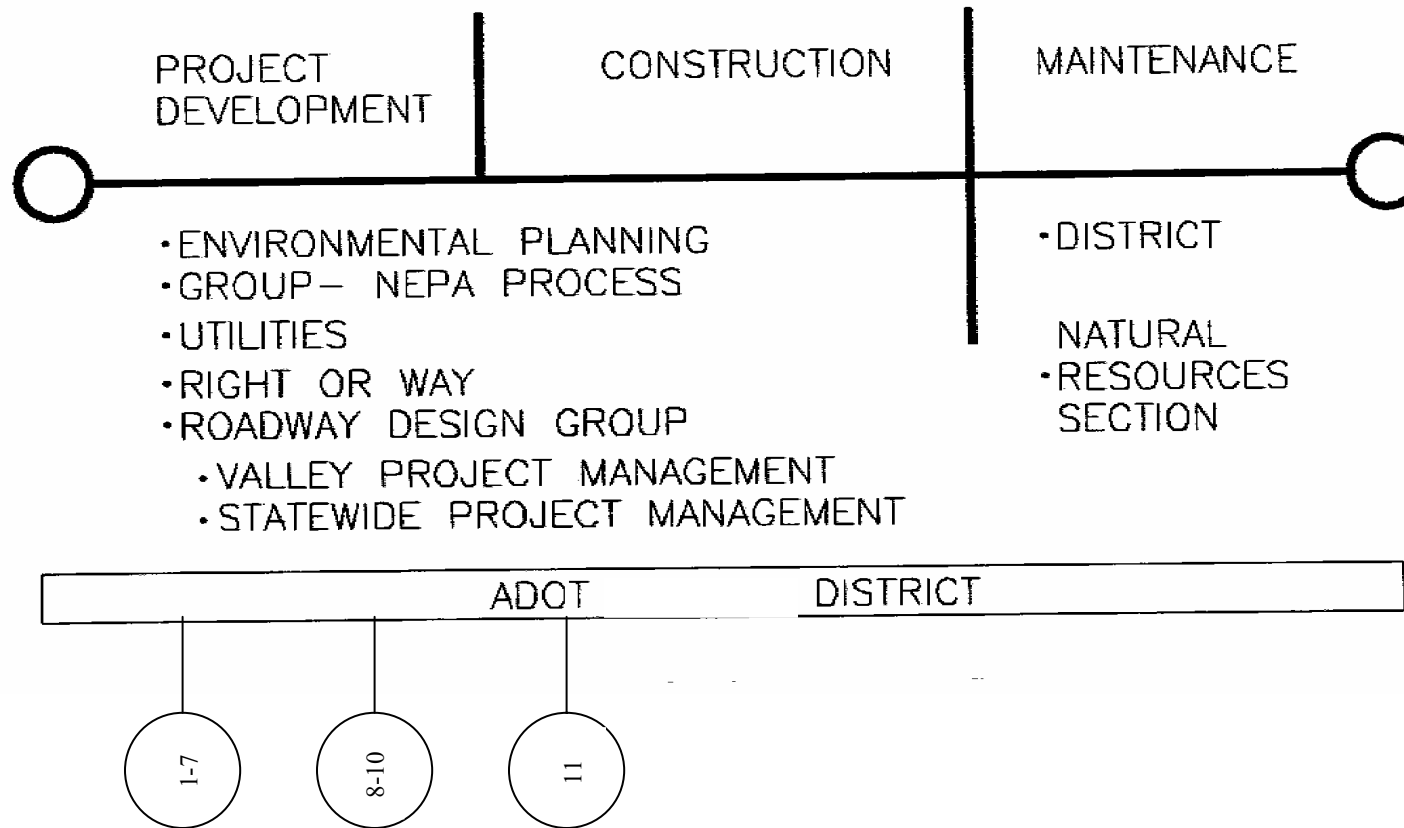
BY: 
Robert E. Hollis
Arizona Division Administrator

4-23-03
Date

BUREAU OF LAND MANAGEMENT, ARIZONA

BY: 
Elaine Zielinski
State Director

4-23-03
Date



BLM INPUT OPPORTUNITIES

Pre-design Phase **(Typically 5-7+ years prior to construction)**

- 1- Opportunity to be a cooperating agency during development of EA or EIS and participate as member of interdisciplinary (ID) team.(duration of process)
- 2- Provide input on issues during agency scoping meeting and/ or field review.(per meeting)
- 3- Review and comment on pre-draft EA or EIS.(30 days)
- 4- Review and comment on Initial DCR.(30 days)
- 5- Comment on Draft EA or EIS during public comment period.(30 days)
- 6- Review Summary of comments prepared for IDCR.(One week)
- 7- Review pre-final EA or EIS. Provide letter supporting findings for inclusion in final NEPA Document.(30 days)

Design Phase

(Occurs 2-3 years prior to construction)

- 8- Provide input on issues during design kickoff meeting and/or field review and monthly progress meetings.(at each meeting)
- 9- Provide comments during review of 30%, 60% and 90% plan review. (2-3 weeks per submittal)
- 10- Provide input during any subsequent updates to NEPA documentation. (varies)

Construction Phase

(Occurs subsequent to award of contract by Transportation Board)

- 11- Provide input during construction partnering meeting and weekly construction meetings.(per meeting or as necessary)

Other Opportunities for Input

Access management plan/ corridor profile development

Public meetings

ADOT Transportation Board meetings

5 year program development

PROJECT
REFERENCE

for

U.S. 93

WICKENBURG – KINGMAN HIGHWAY

NO NAME AND PLACERITAS SECTIONS

Note: The verbiage developed for the No Name and Placeritas Section Project Reference is standard for all future documents. Only the highlighted areas will change by project.

Revised 4-16-03

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	Utility Coordination	
	COE Permits	
	Storm Water Pollution and Prevention Plan	
	Burn Permit	
	Abandonment Rehab Plan	
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NOTE: This Reference has been developed as a cooperative effort among the Federal Highway Administration, the Bureau of Land Management and the Arizona Department of Transportation. It is composed, in part, of copies of original documents stored elsewhere in official files. Copies of the documents are provided for inclusion in the Reference as they are created and distributed to appropriate stakeholders. Where BLM “concurrence,” “approval,” or “consultation” is referenced, the discussion pertains to actions located on lands under the jurisdiction of the Bureau of Land Management, Department of the Interior.

Section 1.1 – Purpose

The purpose of this reference document (Reference) is to provide a roadmap and compendium of documents and information applicable to the implementation of the **US 93, No Name and Placeritas** highway construction project on lands administered by the Bureau of Land Management, Department of the Interior (BLM). Not all project-related information is available when the Reference is initially created and information changes as the project progresses through the design and implementation stages, each of which occur over a period of several years. It is therefore anticipated that there will be both change and growth of the contents included in the Reference over time.

The Reference will ordinarily be initiated with the beginning of the design process. Information will be included as it is generated, leading to a continuous change in the physical content as information becomes available and decisions are made during project development. New sections may be added to the basic list as the need arises. Where document size, difficulty of reproduction or other factors eliminate the practicality of inclusion within this Reference, the text will provide reference only.

Each Reference is updated by its owner as pertinent information is generated. Therefore, while there will be many similarities, there will also be differences in content among the several References maintained by different people working on the same project - primarily due to the perceived needs of each Reference holder. At project completion the Reference may consist of several volumes.

The Reference has no specific status in or of itself and does not change or supercede any other document(s). As a roadmap, the Reference provides a convenient collection of data and information that was originally developed, approved and filed elsewhere for specific purposes. It does not attempt to repeat, interpret, clarify or modify information or direction existent elsewhere. It is simply a compilation of project-related information collected by and for the convenience of the holder. When continuously updated, it provides a collection of reference material for a specific project.

Section 1.2 - Project Summary

The US 93, No Name and Placeritas Sections form the sixth improvement project of the Santa Maria to Wikieup segment of Highway 93 (US 93). The Wickenburg – Kingman Highway Segment 2: Santa Maria River to Wikieup Environmental Assessment (September 16, 1997), which includes this project, provides environmental guidance for highway improvements to US 93 from the town of Wikieup to the Santa Maria River.

The purpose of the project is to improve the capacity and operational characteristics of the highway by upgrading the existing road to a four-lane divided highway. The US 93, No Name and Placeritas Section is approximately 4 miles in length and includes the area between Mileposts 152.9 and 156.7. The project is on State and lands managed by BLM in Township 12 North, Range 9 West and Township 13 North Range 9 and 10 West. The approximate disturbance is estimated to be:

	State land:	44.52	77.28%
BLM Managed land	12.57	27.02%	
Private land:	0.00	0.00	
	56.09 Acres	100.00%	

The Boulders project is currently upgrading the area north of Milepost 152.9 to a configuration similar to the US 93, No Name and Placeritas design.

The Arizona Department of Transportation (ADOT) has issued the Request for Proposal for the final design process for the Cottonwood Canyon and Bridle Creek Project adjacent to and south of the US 93, No Name and Placeritas project. It is the last major project covered by the Wikieup to Santa Maria River Environmental Assessment to complete the four lane divided highway.

Section 1.3 - Project Specific Information and Agreements

Project design and implementation are discovery processes that result in continuing adjustments and changes. As project knowledge increases and the design matures, the need for different solutions often becomes apparent and designs and mitigation measures change in response. Therefore, the design is not considered “final” until the project is placed under contract. Even then, some modification, consistent with the Purpose and Need of the Environmental Assessment (EA) and within the scope and parameters of the design guidelines, may be dictated by on-site conditions. Even though there is some flexibility for modification, ADOT must ensure that the final design meets both the approved environmental clearance and the AASHTO design criteria.

NEPA

This section is reserved for

Project Specific Mitigation Measures
Cultural and Biological information and clearances
Drainage information and reports
Vegetation Surveys and Reports
Erosion Reports
Plant Salvage Information

Right of Way Information

This section is reserved for:

Rights of Way from Arizona State Land Department (ASLD)

Cost to Cure Information

Salvage Information

BLM Authorizations

This section is reserved for third party grants or permits for ancillary facilities and the letter of consent

Change Orders

This section is reserved for agreements and changes in construction related activities

Utility Coordination

This section is reserved for identification of utility providers in the corridor and agreements reached with them.

COE Permits

This section is reserved for identification of the terms and conditions of the permit and transmittal documents

Storm Water Pollution and Prevention Plan

This section is reserved for this document.

Burn Permit

This section is reserved for agreements with local entities regarding burning during construction.

Abandonment Rehabilitation Plan

This section is reserved for agreements regarding the rehabilitation plans for abandoned areas.

Meeting Notes and Minutes

This section is reserved for meeting notes and minutes pertinent to decisions reached.

*(The following is sample text for an e-mail transmission initiated by ADOT R/W Acquisition Section requesting FHWA's concurrence of public necessity for the appropriation of **Linear Rights of Way** from BLM:)*

To: *(NAME - FHWA Realty Officer)*

Subject: *(R/W Parcel #)* BLM Lands Appropriation Concurrence

PROJECT:

HIGHWAY:

SECTION:

PARCEL #:

BLM SERIAL #:

The Arizona Department of Transportation has determined a public need to acquire lands for the above referenced highway project. The project consists of *(brief project description)* and requires the acquisition of ____ acres of new right of way; ____ acres of drainage easement; and ____ acres of temporary construction easement from lands under the jurisdiction of the Bureau of Land Management *(Field Office Name)*.

We hereby request your concurrence of public necessity in order to proceed with application for appropriation of these federal lands as identified on the right of way plans for this project. Upon receipt of your concurrence we will submit an appropriation request directly to the BLM *(Field Office Name)* and a copy of the submittal will be provided to you for your files.

(NAME) Acquisition Agent

Revised 4/16/03

*(The following is sample text for an e-mail transmission initiated by ADOT Materials Geotechnical Design Section requesting FHWA's concurrence of public necessity for the appropriation of **Material Site & Haul Road Rights of Way** from BLM:)*

To: (NAME) FHWA Realty Officer

Subject: (MS #) BLM Lands Appropriation Concurrence

HIGHWAY(s):

MS #:

The Arizona Department of Transportation has determined a public need to acquire lands for the above referenced material site and haul road. The material from this site will be used for (brief description) and requires the acquisition of ____ acres of new right of way from lands under the jurisdiction of the Bureau of Land Management (Field Office Name).

We hereby request your concurrence of public necessity in order to proceed with application for appropriation of these federal lands as identified on the plat map and aerial photograph for this site. Upon receipt of your concurrence we will submit an appropriation request directly to the BLM (Field Office Name) and a copy of the submittal will be provided to you for your files.

(NAME) Acquisition Agent

Revised 4/16/03

(The following is sample text for FHWA's e-mail response to ADOT R/W Acquisition Section:)

The Federal Highway Administration has reviewed this request and concurs in the necessity of the lands for use on a Federal or Federally eligible project.

(NAME) FHWA Realty Officer

Original Transmission from ADOT:

To: *(NAME - FHWA Realty Officer)*

Subject: *(R/W Parcel #)* BLM Lands Appropriation Concurrence

PROJECT:

HIGHWAY:

SECTION:

PARCEL #:

BLM SERIAL #:

The Arizona Department of Transportation has determined a public need to acquire lands for the above referenced highway project. The project consists of *(brief project description)* and requires the acquisition of ____ acres of new right of way; ____ acres of drainage easement; and ____ acres of temporary construction easement from lands under the jurisdiction of the Bureau of Land Management *(Field Office Name)*.

We hereby request your concurrence of public necessity in order to proceed with application for appropriation of these federal lands as identified on the right of way plans for this project. Upon receipt of your concurrence we will submit an appropriation request directly to the BLM *(Field Office Name)* and a copy of the submittal will be provided to you for your files.

(NAME) Acquisition Agent

Revised 4/16/03

(The following is sample text for FHWA's e-mail response to ADOT Materials Geotechnical Design Section:)

The Federal Highway Administration has reviewed this request and concurs in the necessity of the lands for use on a Federal or Federally eligible project.

(NAME) FHWA Realty Officer

Original Transmission from ADOT:

To: *(NAME)* FHWA Realty Officer

Subject: *(MS #)* BLM Lands Appropriation Concurrence

HIGHWAY(s):

MS #:

The Arizona Department of Transportation has determined a public need to acquire lands for the above referenced material site and haul road. The material from this site will be used for *(brief description)* and requires the acquisition of ____ acres of new right of way from lands under the jurisdiction of the Bureau of Land Management *(Field Office Name)*.

We hereby request your concurrence of public necessity in order to proceed with application for appropriation of these federal lands as identified on the plat map and aerial photograph for this site. Upon receipt of your concurrence we will submit an appropriation request directly to the BLM *(Field Office Name)* and a copy of the submittal will be provided to you for your files.

(NAME) Acquisition Agent

Revised 4/16/03



Arizona Department of Transportation
Intermodal Transportation Division
206 South Seventeenth Avenue Phoenix, Arizona 85007-3213

Janet Napolitano
Governor

(DATE)

Debra R. Brisk
Deputy Director

Victor M. Mendez
Director

Bureau of Land Management Field Office

RE: APPLICATION FOR HIGHWAY RIGHT OF WAY
 PROJECT: _____
 HIGHWAY: _____
 SECTION: _____
 PARCEL #: _____
 BLM SERIAL#: _____

Dear _____:

Application is hereby made by the State of Arizona, acting by and through its Department of Transportation (ADOT), for a federal land transfer located within the jurisdiction of your Field Office in _____ County, pursuant to the provisions of Section ((107(d) –OR- 317)) of Title 23, U.S.C.

This right of way is needed for the construction, operation and maintenance of the above-referenced highway project and is in the best interest of public safety, necessity and convenience. We further request immediate right of entry to avoid project delays.

The enclosed set of right of way plans provides a graphic depiction of the right of way required on portions of public lands, containing approximately _____ acres, and described as (Gila & Salt River Base & Meridian):

[REFER TO ATTACHED EXHIBIT(S)]

This project is being completed in accordance with the specific conditions as agreed to during the environmental and design phases, which will be incorporated into the ADOT Special Provisions for the above-referenced project.



2001 Award Recipient

(BLM Field Office)

(R/W Parcel #)

(DATE)

Page 2

The Federal Highway Administration (FHWA), Arizona Division, has determined that the lands shown are reasonably necessary for use on a Federal Highway administered project and has concurred with this request (see attached e-mail correspondence). If the appropriation of these lands is not contrary to public interests, or inconsistent with the purpose for which such lands have been acquired, please provide your Letter of Consent authorizing the transfer of this land and immediate right of entry, directly to ADOT, with a copy to FHWA. Upon receipt of your Letter of Consent, a Highway Easement Deed will be prepared for execution by FHWA. You will be provided with a copy of the executed deed upon recording.

If you have any questions, you may contact me in writing at Arizona Department of Transportation, Right of Way Acquisition Section, 205 South 17th Avenue – 612E, Phoenix, Arizona 85007-3213, via e-mail at _____, or call me at (602) _____. Thank you for your consideration.

Sincerely,

(NAME)

Right of Way Agent

Enclosures

cc (w/enc.): (NAME), Realty Officer
FHWA, Arizona Division

Revised 4/16/03





Arizona Department of Transportation
Intermodal Transportation Division
206 South Seventeenth Avenue Phoenix, Arizona 85007-3213

Janet Napolitano
 Governor

(DATE)

Debra R. Brisk
 Deputy Director

Victor M. Mendez
 Director

Bureau of Land Management Field Office

RE: APPLICATION FOR MATERIAL SOURCE & HAUL ROAD
 HIGHWAY(s): _____
 MATERIAL SITE #: _____

Dear _____:

Application is hereby made by the State of Arizona, acting by and through its Department of Transportation (ADOT), for a federal land transfer located within the jurisdiction of your Field Office in _____ County, pursuant to the provisions of Section ((107(d) –OR- 317)) of Title 23, U.S.C.

Right of way is needed for a material source and haul road for the construction, operation and maintenance of the above-referenced highway(s) and is in the best interest of public safety, necessity and convenience. We further request immediate right of entry to avoid project delays.

Enclosed is a description for the requested right of way, a plat map, mining and reclamation plan, and environmental documentation for the material source covering this application for right of way on portions of the following public lands (Gila & Salt River Base & Meridian):

(LEGAL DESCRIPTION)



2001 Award Recipient

(BLM Field Office)

(MS #)

(DATE)

Page 2

The Federal Highway Administration (FHWA), Arizona Division, has determined that the lands shown are reasonably necessary for use on a Federal Highway administered project and has concurred with this request (see attached e-mail correspondence). If the appropriation of these lands is not contrary to public interests, or inconsistent with the purpose for which such lands have been acquired, please provide your Letter of Consent authorizing the transfer of this land and immediate right of entry, directly to ADOT, with a copy to FHWA. Upon receipt of your Letter of Consent, a Highway Easement Deed will be prepared for execution by FHWA. You will be provided with a copy of the executed deed upon recording.

If you have any questions, you may contact me in writing at Arizona Department of Transportation, Materials Group - Geotechnical Design Section, 1221 N. 21st Avenue – 068R, Phoenix, Arizona 85009-3740, via e-mail at _____, or call me at (602) _____. Thank you for your consideration.

Sincerely,

(NAME)
Right of Way Agent

Enclosures

cc (w/enc.): (NAME), Realty Officer
FHWA, Arizona Division

Revised 4/16/03



DRAFT Letter of Consent for Linear Rights-of-Way
BLM LETTERHEAD

AZA- _____
Project: _____
Highway: _____
Section: _____
Parcel: _____

Date

Division Administrator
Federal Highway Administration
One Arizona Center, Suite 410
400 E. Van Buren
Phoenix, AZ 85004

Dear _____:

Request has been received for the appropriation of and immediate right of entry to BLM-managed lands within the State of Arizona for use by the State of Arizona, acting by and through its Department of Transportation for _____ (Project name) _____, pursuant to U.S.C. Title 23: Highways, Sections 317 [OR] Section 107(d).

The area requested lies in the: [Legal description – If legal description is excessively long, it may be attached as an exhibit and referenced accordingly] as shown on the map titled _____ and marked _____.

In accordance with the provisions of the Interagency Agreement No. AA-851-IA2-40, dated July 27, 1982, between the Bureau of Land Management (BLM) and the Federal Highway Administration (FHWA), the BLM agrees to the appropriation and transfer of the above-described lands for the foregoing purpose, together with immediate right of entry for construction purposes. This appropriation is subject to: the standard conditions of appropriation contained in the Memorandum of Understanding between Arizona Department of Transportation (ADO), Federal Highway Administration (FHWA) and Bureau of Land Management (BLM) dated April 23, 2003, as supplemented by the Operating Agreement dated April 23, 2003, and all other specific conditions as agreed to during the environmental and design phases, which will be incorporated into ADOT's Special Provisions for the above referenced project.

Sincerely,

[NAME]
Field Manager

cc: Realty Officer
FHWA, Arizona Division

DRAFT Letter of Consent for Material Site Rights-of-Way
BLM LETTERHEAD

AZA-_____
Highway(s): _____
MS#: _____

Date

Division Administrator
Federal Highway Administration
One Arizona Center, Suite 410
400 E. Van Buren
Phoenix, AZ 85004

Dear _____:

Request has been received for the appropriation of and immediate right of entry to BLM-managed lands within the State of Arizona for use by the State of Arizona, acting by and through its Department of Transportation for (Material Site #) , pursuant to U.S.C. Title 23: Highways, Sections 317 [OR] Section 107(d).

The area requested lies in the: [Legal description – If legal description is excessively long, it may be attached as an exhibit and referenced accordingly] as shown on the map titled _____ and marked _____.

In accordance with the provisions of the Interagency Agreement No. AA-851-IA2-40, dated July 27, 1982, between the Bureau of Land Management (BLM) and the Federal Highway Administration (FHWA), the BLM agrees to the appropriation and transfer of the above-described lands for the foregoing purpose, together with immediate right of entry for construction purposes. This appropriation is subject to: the standard conditions of appropriation contained in the Memorandum of Understanding between Arizona Department of Transportation (ADOT), Federal Highway Administration (FHWA) and Bureau of Land Management (BLM) dated April 23, 2003, as supplemented by the Operating Agreement dated April 23, 2003, and the mining and reclamation plan and mitigation measures identified in the environmental document for the above referenced project and all other specific conditions as agreed.

Sincerely,

[NAME]
Field Manager

cc: Realty Officer
FHWA, Arizona Division

Revised 4/16/03

WHEN RECORDED RETURN TO
 ARIZONA DEPARTMENT OF TRANSPORTATION
 R/W OPERATIONS SEC. (612 E)
 205 S. 17TH AVENUE
 PHOENIX, AZ 85007-3212

PROJECT: «PROJECT»
 «COMPLETE TRAC NO»
 SECTION: «SECTION»
 PARCEL: «PARCEL»
 BLM #:

HIGHWAY EASEMENT DEED

THIS DEED made this _____ day of _____, 20____, by and between the **UNITED STATES OF AMERICA**, acting by and through the **Department Of Transportation, Federal Highway Administration**, hereinafter referred to as **DEPARTMENT (GRANTOR)**, and the **STATE OF ARIZONA**, acting by and through its **Department of Transportation**, hereinafter referred to as the **GRANTEE**:

WITNESSETH:

WHEREAS, the **GRANTEE** has filed application under the provisions of the Act of Congress of August 27, 1958, as amended (*23 U.S.C. Section 317 or Section 107 (d) – if interstate*), for the right-of-way of a highway over certain federal land under the jurisdiction of the Department of Interior - Bureau of Land Management, in the State of Arizona; and

WHEREAS, the Arizona Division Administrator of the Federal Highway Administration, pursuant to delegation of authority from the Secretary of Transportation, has determined that an easement over the land covered by the application is reasonably necessary for right-of-way for construction of Project «Construction_No»; and

WHEREAS, the Department of Interior, acting by and through the Bureau of Land Management, in its consent to the appropriation of the federal land, has agreed to the transfer by the **DEPARTMENT** of an easement over the land to the **GRANTEE**;

NOW THEREFORE, the **DEPARTMENT**, as authorized by law, does hereby grant to the **GRANTEE** an easement for right-of-way for the construction, operation, and maintenance of a highway (including control of access thereto from adjoining lands, if interstate or other controlled access) and use of the space above and below the established grade line of the highway pavement for highway purposes on, over, across, in, and upon the following described federal land within the United States in the County of «County», State of Arizona, Gila and Salt River Meridian:

(continued)

<u>TOWNSHIP</u>	<u>RANGE</u>	<u>SECTION</u>	<u>SUBDIVISION</u>
-----------------	--------------	----------------	--------------------

As shown on the right of way plans for project «Project»/«CompleteTracNo»/«SECTION» on file in the office of the State Engineer at Phoenix, Arizona.

Subject, however, to the following terms and conditions:

1. This easement is subject to outstanding valid claims, if any, existing on the date of this grant, and the GRANTEE shall obtain such permission as may be necessary on account of any such claims;
2. The easement herein granted shall terminate 10 years from the date of execution of this deed by the United States of America in the event construction of a highway on the right-of-way is not started during such period;
3. The design and construction of highway projects situated on this right-of-way will be in accord with the provisions of Title 23, United States Code (U.S.C.) - Highways, and amendments; applicable State laws; the construction specifications of the Arizona Department of Transportation as approved by the Federal Highway Administration for use on Federal-aid projects; and the Memorandum of Understanding between the Arizona Department of Transportation and the Arizona Divisions of the Federal Highway Administration and the Bureau of Land Management, dated _____, including any supplements or modifications thereto;
4. The easement herein granted is limited to use of the described right-of-way and the space above and below the established grade line of the highway pavement for the purpose of construction, operation, and maintenance of a highway in accordance with the approved plans and does not include the grant of any rights for non-highway purposes or facilities: Provided, that the right of the Bureau of Land Management to use or authorize the use of any portion of the right-of-way for non-highway purposes shall not be exercised when such use would be inconsistent with the provisions of Title 23, U.S.C., and amendments, and the Federal Highway Administration Regulations issued pursuant thereto, or would interfere with the free flow of traffic or impair the full use and safety of the highway, and in any case the Federal Highway Administration and GRANTEE shall be consulted prior to the exercise of such rights; and Provided further, that nothing herein shall preclude the Bureau of Land Management from locating Department of the Interior information signs on the portions of the right-of-way outside of construction clearing limits [except that such signs shall not be located on the right of way of an Interstate System];

(continued)

5. When need for the easement herein granted shall no longer exist and the area has been reasonably rehabilitated to protect the public and environment, the **GRANTEE** shall give notice of that fact to the **GRANTOR** and, upon approval by the Arizona State Transportation Board, the rights herein granted shall terminate and land shall immediately revert to the Department of Interior, or assigns.

The **GRANTEE**, in consideration of the conveyance of said land, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns that:

- a. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over or under such land hereby conveyed;
- b. The **GRANTEE**, shall use said land so conveyed in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation, in effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

In the event of breach of any of the above-mentioned nondiscrimination conditions, the Department shall have the right to re-enter said land and facilities on said land, and the above-described land and facilities shall thereupon revert to the Department of Interior, or assigns, as such interest existed prior to this instrument.

(continued)

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

Notary Public

(continued)

In compliance with the conditions set forth in the foregoing deed, the **STATE OF ARIZONA**, certifies, and by the acceptance of this deed, accepts the right-of-way over certain land herein described and agrees for itself, its successors and assigns forever to abide by the conditions set forth in said deed.

Accepted this ____ day of _____, 20 ____.

By _____
Chief Right of Way Agent
Right of Way Group

STATE OF ARIZONA)
) ss
County of)

I, _____, a Notary Public in and for said County and State, hereby certify that _____, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he/she in his/her capacity as Chief Right of Way Agent, Right of Way Group, executed the same voluntarily on this day.

Given under my hand and seal of office this ____ day of _____, 20 ____.

Notary Public

(SEAL)

My Commission Expires _____

WHEN RECORDED RETURN TO
ARIZONA DEPARTMENT OF TRANSPORTATION
MATERIALS GROUP (068R)
1221 N. 21ST AVENUE
PHOENIX, AZ 85009-3740

HIGHWAY(S):
M.S.#:
BLM #:

HIGHWAY EASEMENT DEED

THIS DEED made this _____ day of _____, 20____, by and between the **UNITED STATES OF AMERICA**, acting by and through the **Department Of Transportation, Federal Highway Administration**, hereinafter referred to as **DEPARTMENT (GRANTOR)**, and the **STATE OF ARIZONA**, acting by and through its **Department of Transportation**, hereinafter referred to as the **GRANTEE**:

WITNESSETH:

WHEREAS, the **GRANTEE** has filed application under the provisions of the Act of Congress of August 27, 1958, as amended (*23 U.S.C. Section 317 and Section 107(d) - if interstate*), for the right to excavate and remove and/ or store materials for construction, operation and maintenance of highways (material site) and a road to transport said materials (haul road) over certain federal land under the jurisdiction of the Department of Interior - Bureau of Land Management, in the State of Arizona, and

WHEREAS, the Arizona Division Administrator of the Federal Highway Administration, pursuant to delegation of authority from the Secretary of Transportation, has determined that an easement over the land covered by the application is reasonably necessary for the construction and maintenance of highways on the Federal Aid Highway System; and

WHEREAS, the Department of Interior, acting by and through the Bureau of Land Management, in its consent to the appropriation of the federal land, has agreed to the transfer by the **DEPARTMENT** of an easement over the land to the **GRANTEE**;

NOW THEREFORE, the **DEPARTMENT**, as authorized by law, does hereby grant to the **GRANTEE** an easement for the construction, operation, and maintenance of a material site and haul road (including control of access thereto from adjoining lands), for highway purposes on, over, across, in, and upon the following described federal land within the United States in the County of «County», State of Arizona, Gila and Salt River Meridian:

(continued)

TOWNSHIP RANGE SECTION SUBDIVISION

As more particularly shown on the plat for M.S.# _____ on file in the office of the Assistant State Engineer at Phoenix, Arizona.

Subject, however, to the following terms and conditions:

1. This easement is subject to outstanding valid claims, if any, existing on the date of this grant, and the **GRANTEE** shall obtain such permission as may be necessary on account of any such claims;
2. The easement herein granted shall terminate 10 years from the date of execution of this deed by the United States of America in the event use of the material site is not started during such period;
3. The design and construction of material site and haul road situated on this right-of-way will be in accord with the provisions of Title 23, United States Code (U.S.C.) - Highways, and amendments; applicable State laws; the construction specifications of the Arizona Department of Transportation as approved by the Federal Highway Administration for use on Federal-aid projects; and the Memorandum of Understanding between the Arizona Department of Transportation and the Arizona Divisions of the Federal Highway Administration and the Bureau of Land Management, dated _____, including any supplements or modifications thereto;
4. The easement herein granted is limited to use of the described right-of-way for the purpose of construction, operation, and maintenance of a material site and haul road in accordance with the approved plans and does not include the grant of any rights for non-highway purposes or facilities: Provided, that the right of the Bureau of Land Management to use or authorize the use of any portion of the right-of-way for non-highway purposes shall not be exercised when such use would be inconsistent with the provisions of Title 23, U.S.C., and amendments, and the Federal Highway Administration Regulations issued pursuant thereto, or would interfere with the free flow of traffic or impair the full use and safety of the material site and haul road, and in any case the Federal Highway Administration and **GRANTEE** shall be consulted prior to the exercise of such rights; and Provided further, that nothing herein shall preclude the Bureau of Land Management from locating Department of the Interior information signs on the portions of the right-of-way outside of construction clearing limits;

(continued)

5. When need for the easement herein granted shall no longer exist and the area has been reasonably rehabilitated to protect the public and environment, the **GRANTEE** shall give notice of that fact to the **GRANTOR** and, upon approval by the Arizona State Transportation Board, the rights herein granted shall terminate and land shall immediately revert to the Department of Interior, or assigns.

The **GRANTEE**, in consideration of the conveyance of said land, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns that:

- a. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over or under such land hereby conveyed;
- b. The **GRANTEE**, shall use said land so conveyed in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation, in effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

In the event of breach of any of the above-mentioned nondiscrimination conditions, the Department shall have the right to re-enter said land and facilities on said land, and the above-described land and facilities shall thereupon revert to the Department of Interior, or assigns, as such interest existed prior to this instrument.

(continued)

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

STATE OF ARIZONA)
) ss
County of)

Witness my hand and seal this _____ day of _____, 20_____

Notary Public

Commission Expires _____

(continued)

In compliance with the conditions set forth in the foregoing deed, the **STATE OF ARIZONA**, certifies, and by the acceptance of this deed, accepts the right-of-way over certain land herein described and agrees for itself, its successors and assigns forever to abide by the conditions set forth in said deed.

Accepted this ____ day of _____, 20____.

By _____
Assistant State Engineer
Materials Group

STATE OF ARIZONA)
) ss
County of)

I, _____, a Notary Public in and for said County and State, hereby certify that _____, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he/she in his/her capacity as Assistant State Engineer, Materials Group, executed the same voluntarily on this day.

Given under my hand and seal of office this ____ day of _____, 20 ____.

Notary Public

(SEAL)

My Commission Expires _____

ADOT / BLM / FHWA R/W SUBGROUP GLOSSARY OF TERMS

PREAMBLE:

In April of 2000, a Right of Way Subgroup was formed consisting of representatives from the Arizona Department of Transportation and the Arizona offices of the Bureau of Land Management and the Federal Highway Administration. The purpose of this group was to seek methods of standardizing and streamlining the process of acquiring rights of way from the Bureau of Land Management for state transportation purposes. Early in the process, it was determined that the three agencies often used terms differently and a joint understanding of commonly-used words would be beneficial. It is with this intent that the following *Common Acronyms & Abbreviations* and *Glossary of Terms* has been developed. The definitions provided are not intended to be utilized as legal definitions, but rather to facilitate communications between these three agencies when discussing right-of-way issues.

ADDITIONAL REFERENCES:

Arizona Revised Statutes governing right of way issues primarily include §28-7091 - §28-7215.

United States Code

Code of Federal Regulations, Title 23 and Title 49

Memorandum of Understanding between ADOT, BLM & FHWA, dated April 23, 2003

Operating Agreement, dated April 23, 2003 (supplements MOU)

More detailed information regarding ADOT's environmental analysis processes can be found on the Environmental Planning Group website which can be accessed either via the ADOT Net Homepage - select "About ADOT" – "by Section/Group" – "Environmental Planning"; or directly via the internet at "<http://adotenvironmental.com>"

ADOT / BLM / FHWA R/W SUBGROUP
COMMON ACRONYMS & ABBREVIATIONS

ADOT:	Arizona Department of Transportation
AO:	Authorized Officer (BLM Field Manager or delegate)
ARS:	Arizona Revised Statutes
AS:	Archaeological Survey (relating to environmental analysis)
BE:	Biological Evaluation (relating to environmental analysis)
BLM:	Bureau of Land Management (specifically Arizona Offices)
C&S:	ADOT Contracts & Specifications Section
CE:	Categorical Exclusion (relating to environmental analysis)
CFR:	Code of Federal Regulations
DCR:	Design Concept Report
EA:	Environmental Assessment (relating to environmental analysis)
ED:	Environmental Determination (relating to environmental analysis)
EIS:	Environmental Impact Statement (relating to environmental analysis)
EPG:	ADOT Environmental Planning Group
ESA:	Environmental Site Assessment (Phase II – site specific HAZMAT identification) (Phase III - site specific HAZMAT remediation). may also be used to refer to the “Endangered Species Act” (see NEPA Glossary)
FHWA:	Federal Highway Administration (specifically Arizona Division)
FLPMA:	Federal Land Policy & Management Act
FLT:	Federal Land Transfer
FUP:	Free Use Permit
FONSI:	Finding Of No Significant Impact (relating to environmental analysis)
HAZMAT:	Hazardous Materials (part of environmental assessment)
HED:	Highway Easement Deed
H(#):	Haul Road Number (for material sites)
ISA:	Initial Site Assessment (Phase I) (parcel-specific assessment for HAZMAT)
LOC:	Letter of Consent (issued by BLM)
MOU:	Memorandum of Understanding (specifically between ADOT/BLM/FHWA dated April 23, 2003)
MS:	Material Site
MSEB:	Material Site Excavation Boundaries (ADOT material site where material is approved for excavation or removal)
NEPA:	National Environmental Policy Act
NHS:	National Highway System
OA:	Operating Agreement (specifically between ADOT/BLM/FHWA dated April 23, 2003)
PA:	Project Assessment (relating to environmental analysis)
PISA:	Preliminary Initial Site Assessment (project overview for HAZMAT)
PM:	ADOT or BLM Project Manager; may also be used to refer to a material site “Plat Map” (ADOT map showing material site boundaries & haul road location)
PR:	Project Reference
PRWB:	Proposed Right of Way Boundaries (material site expansion area)
PS:	Pit Sketch (ADOT aerial photo showing location of material site & usually the haul road location)

ADOT / BLM / FHWA R/W SUBGROUP
COMMON ACRONYMS & ABBREVIATIONS

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PS&E:	Plans, Specifications & Estimate (ADOT's bid package prepared for advertising and soliciting contractor bids for a highway project)
ROD:	Record of Decision (action by FHWA relating to environmental analysis)
R/W:	Right of way (also " ROW ")
SHPO:	State Historic Preservation Officer
STB:	State Transportation Board
TCE:	Temporary Construction Easement
USC:	United States Code
VER:	Valid Existing Rights (to use BLM lands)

ADOT / BLM / FHWA R/W SUBGROUP

GLOSSARY OF TERMS

ABANDONMENT: This term is used differently by ADOT, FHWA & BLM. ADOT uses this term to convey R/W to another governmental agency for continued use as a transportation facility. FHWA utilizes this term to mean the relinquishment of public interest in existing R/W, with no intent to reclaim or reuse for R/W purposes (an action which ADOT calls either “vacate and extinguishment” or “vacate and relinquishment”, depending on whether the lands are public or private). BLM uses this term when the authorized user “walks away” or abandons the site without notification.

ACCESS RIGHTS: The right of ingress to and egress from a property that abuts an existing street or highway that is a private property right that cannot be taken without just compensation. However, this right is not unlimited, but subordinate to the public’s safe use of the route. Thus, abutting owners are not entitled to access at any and all points along the public roadway, rather to reasonable and adequate access.

ACQUISITION: The process and those activities required to obtain an interest in, and possession of, real property.

AGENCY: A governmental organization (Federal, State, or local) or a quasi-governmental organization (such as a utility company) that acquires real property. NOTE: BLM does not include quasi-governmental entities in their use of this term.

APPRAISAL: The act or process by which a qualified appraiser develops an independent opinion of defined value of a property as of a specific date, based on analysis of relevant market information. The term “appraisal” is also synonymous with the appraiser’s report setting forth such opinions. NOTE: The transfer of land from BLM to ADOT does not require appraisal.

APPROPRIATION: The act of acquiring right of way on BLM lands for federal-aid highway purposes, issued by BLM to FHWA under Title 23.

AS-BUILTS: The final set of ADOT construction plans generated upon completion of a project showing improvements as ultimately constructed. These plans often differ from the plans generated at the time the contract for the project is awarded due to changes made “in the field” during the construction and landscaping phases of a project. BLM uses this term to define a survey or similar document that shows the alignment “footprint” after construction, to document the actual surface of the land occupied by the authorized user. NOTE: This information is contained in ADOT’s final R/W plans.

AUTHORIZED OFFICER: BLM Field Manager or delegate who is authorized to consent to FHWA appropriation of BLM lands.

CONSTRUCTION PLANS: A set of engineering design plans which define the improvements for a highway project. Construction plans differ from R/W plans in that they specifically define construction issues, including existing and proposed highway, profiles, typical sections, new slope limits, and all construction features, structures and items. Also called “Design Plans”.

**ADOT / BLM / FHWA R/W SUBGROUP
GLOSSARY OF TERMS**

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DESIGN PLANS: See “Construction Plans”.

DISPOSAL: The conveyance of the State’s interest in real property determined to be in excess of State transportation needs. Disposal by ADOT may be accomplished by sale or any of several formal processes, as outlined in §28-7095 and §28-7201-§28-7215. See also “Abandonment”, “Extinguishment”, “Relinquishment”, and “Vacate” for definitions of various processes. NOTE: Any disposal of real property by ADOT (other than excess land sales) requires a resolution by the State Transportation Board in accordance with §28-7046.

EASEMENT: An interest in real property that conveys specific use, but not ownership rights in another’s property. Easements can be permanent or temporary and required for such purposes as access, drainage, ponding, slopes, or perpetual easements for the roadway itself. The term is used to describe either the right itself or the document conveying the right. See “Highway Easement Deed” and “Temporary Construction Easement”.

ENVIRONMENTAL ANALYSIS: An assessment of potential impacts for all highway-related projects. This analysis considers such factors as: existing land uses, hazardous materials, air quality, noise abatement, sensitive or endangered species whose habitat may be within the project area, historic sites, cultural resources and other socio-economic issues. Additional information regarding environmental issues can be found in the NEPA Glossary and on ADOT’s Environmental Planning Group website, which is listed in the Additional References section.

EXTINGUISHMENT: ADOT utilizes this term to vacate the transportation facility and extinguish interests in existing R/W that is held via easement interest only from private individuals.

FEDERAL-AID HIGHWAY: Highway facilities on the Federal-Aid Highway System which involve or are eligible for federal-aid funding. Interstates, primary, secondary & urban roads and off-system bridge replacements are major components of the federal highway program.

FEDERAL LAND TRANSFER: FHWA activities involved in the appropriation of lands from another Federal agency (such as BLM).

HAUL ROADS: Access roads (which are not public roadways) leading to an ADOT material site.

HIGHWAY EASEMENT DEED: The conveying document issued by FHWA to ADOT for permanent right of way - both linear rights of way and material sites & haul roads.

**ADOT / BLM / FHWA R/W SUBGROUP
GLOSSARY OF TERMS**

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LETTER OF CONSENT: The document issued by BLM authorizing FHWA to appropriate the public lands and transfer to ADOT for highway purposes. Also grants ADOT immediate right of entry to commence construction activities in advance of actual HED conveyance.

MAINTENANCE: Includes, but is not limited to, grading, resurfacing, cleaning culverts, clearing roadside brush, pruning vegetation, surveying, striping, etc. If performed within existing right of way, no permit is needed.

MATERIAL SITES: Sites approved for excavation and removal of material to be used in the construction, maintenance and/or operation of an ADOT project.

NATIONAL HIGHWAY SYSTEM: A system of highways as defined in 23 U.S.C. 103(b).

NEGOTIATIONS: The process used by acquiring agencies to reach amicable agreements with property owners for the acquisition of needed property.

NON-FEDERAL-AID HIGHWAY: State roads not eligible for federal-aid funding, which are the sole responsibility of the state.

OPERATING AGREEMENT: A documented agreement between ADOT, BLM and FHWA establishing procedures and supplementing the Memorandum of Understanding (dated April 23, 2003).

OVERSIGHT AGREEMENT: An agreement between ADOT and FHWA regarding project Administrative Procedures for Federal Projects (most recently dated December 12, 2002).

OWNERSHIP RECORD SHEET: A component of the R/W plans, which provides parcel specific information, i.e. R/W parcel number, owner name, legal description, total parcel size, existing R/W, and new R/W requirements (both fee & easement).

PARCEL: A piece of land in one ownership entity. ADOT assigns a R/W Parcel Number to each parcel to be acquired which is used throughout the acquisition process and also becomes a historical reference number.

PERSONAL PROPERTY: Property that is not permanently attached to, or a part of the real property. Essentially, it is property that can be moved.

PRIOR RIGHTS: The identification that utilities, public and private, were in place prior to establishment of a public roadway. If the roadway is in place prior to the establishment of the utility, then the utilities are there “by permit” and must relocate at their expense. If the utility has “prior rights” then ADOT is responsible for utility relocations.

**ADOT / BLM / FHWA R/W SUBGROUP
GLOSSARY OF TERMS**

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REAL PROPERTY: Land and any improvements affixed thereto, including but not limited to, fee interests, easements, air or access rights, and the rights to control use, leasehold, and leased fee interests.

RELINQUISHMENT: This term is used differently by ADOT & FHWA. ADOT uses this term to vacate the transportation facility and return lands acquired (typically via a perpetual easement type interest) from Federal or State agencies (such as BLM, BOR, BIA, FS, SLD) back to these agencies when the R/W is no longer to be utilized as a transportation facility. FHWA utilizes this term to mean the conveyance of the R/W to another governmental agency for continued use as a transportation facility (ADOT calls this action “abandonment”). BLM uses this term when the authorized user no longer needs the use authorization and voluntarily gives it up.

RIGHT OF WAY: R/W consists of real property and rights therein used for the construction, operation, or maintenance of a transportation or related facility. R/W is also the name of the Group within ADOT responsible for acquiring or disposing of such real property.

RIGHT OF WAY PLANS: R/W plans consist of engineering drawings, which delineate the right of way requirements (both existing and proposed) for a highway project. R/W Plans differ from construction plans in that they are primarily concerned with R/W issues and show such features as parcel ownership limits and existing improvements. R/W plans are developed concurrently with the construction/design plans at various stages of submittal.

SCOPING: NEPA process wherein stakeholder agencies and the public are given the opportunity to express concerns and identify issues regarding proposed highway project.

STATE HIGHWAY: State highways consist of the parts of the state routes designated and accepted as state highways by the State Transportation Board.

STATE ROUTE: State routes consist of corridor locations that have been designated by the State Transportation Board as a location for the construction of a state highway.

TEMPORARY CONSTRUCTION EASEMENT: By definition, TCEs are temporary in nature and the areas involved revert back to the property owner at a specified time, typically upon completion of the construction project for which it was acquired. TCEs typically fall into two categories: (1) those benefiting the property owner for purposes of driveway or utility reconnection, fencing replacement, etc.; or (2) those required by the Department to facilitate construction of the project for purposes such as detour roads, slope flattening, drainage channelization, storage of materials, etc.

ADOT / BLM / FHWA R/W SUBGROUP
GLOSSARY OF TERMS

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UTILITY FACILITY: Electric, gas, water, steam power, or materials transmission or distribution system; any communications system including cable television; and any fixtures, equipment, transportation system, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

UTILITY RELOCATION: The adjustment of a utility facility required by a highway improvement project, which may include the acquisition of additional R/W in order to remove and reinstall the displaced facility.

VACATE: The termination of ADOT's easement interest in existing rights of way, with no intent to reclaim or reuse for R/W by a public agency. This action typically accompanies a relinquishment or extinguishment action.

VALID EXISTING RIGHTS: The rights for use of BLM-managed lands, regardless of whether there is written documentation of such rights. These rights may have been granted by Congress (i.e. RS2477 rights-of-way), Executive or Presidential proclamation, BLM, a previous land owner, another federal agency when the land was under their jurisdiction, mining claims properly filed under the General Mining Laws, etc.

Revised 4/16/03

NEPA GLOSSARY

I. GLOSSARY OF COMMON TERMS

AASHTO	American Association of State Highway Transportation Officials
ADEQ	Arizona Department of Environmental Quality
ADOT	Arizona Department of Transportation
ARPA	Archaeological Resources Protection Act
BLM	Bureau of Land Management
CE	Categorical Exclusion
CAA	Clean Air Act
CWA	Clean Water Act
CFR	Code of Federal Regulations
C & S	Contracts and Specifications
CEQ	Council on Environmental Quality
DOI	Department of Interior
DOT	Department of Transportation
DCR	Design Concept Report
ESA	Endangered Species Act
EA	Environmental Assessment
EIS	Environmental Impact Statement
EPG	Environmental Planning Group
FHWA	Federal Highway Administration
FLPMA	Federal Land Policy and Management Act
FONSI	Finding of No Significant Impact
HED	Highway Easement Deed
ID Team	Inter-disciplinary Team
LRMP	Land and Resource Management Plan
LMP	Land Management Plan
LOC	Letter of Consent
MUTCD	Manual of Uniform Traffic Control Devices
MOU	Memorandum of Understanding
MMA	Minerals Management Act
MVD	Motor Vehicle Division
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act

NPDES	National Pollutant Discharge Elimination System
NAGPRA	Native American Graves Protection and Repatriation Act
PS & E	Plans, Specifications and Estimate
PA	Project Assessment
ROD	Record of Decision
ROW	Right-of-Way
SHPO	State Historic Preservation Officer
TCE	Temporary Construction Easement
T & E	Threatened and Endangered
USC	United States Code
VER	Valid Existing Rights

II. WORDS THAT HAVE CAUSED CONFUSION

The Arizona Department of Transportation (ADOT); the Bureau of Land Management (BLM), an agency within the Department of the Interior (DOI); and the Federal Highway Administration (FHWA), an agency within the Department of Transportation (DOT); have entered into a partnership to cooperate in planning efforts and to facilitate completion of projects affecting all three agencies. Each agency has its own mission, value structure and way of doing business, which have contributed to each agency's development of its own jargon. Often, the same word or phrase has different implications across the agencies. Since ADOT does much of the National Environmental Policy Act (NEPA) staff work for the FHWA, these agencies have developed relatively similar interpretations. Conversely, the BLM's NEPA regulations were promulgated within the DOI rather than the DOT where different processes and agency mission cause differing interpretations and results when compared to those in FHWA and ADOT. The following matrix has been assembled to summarize the variation in definition, innuendo, and implication where it occurs. The definitions provided are not intended to be utilized as legal definitions, but rather to display how the agencies have resolved to operate with the apparent conflicts.

WORDS THAT HAVE CAUSED CONFUSION

TOPIC	JARGON	DEFINITION	DISCUSSION
Jurisdiction	Lead Agency	<p>“Jurisdiction by law” means agency authority to approve, veto, or finance all or part of the proposal. (40 Code of Federal Regulations (CFR) 1508.15)</p> <p>“Lead agency” means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement (40 CFR 1508.16)</p>	<p>The lead federal agency has the responsibility to certify the adequacy of the NEPA process as part of its decision, therefore, the NEPA process follows the lead federal agency’s regulation.</p> <p>As the lead federal agency for highway projects with a federal “trigger,” the FHWA is the responsible federal agency for all NEPA within the ROW. As the federal agency holding the BLM easement for the highway, the FHWA is also the responsible agency for activities within the ROW. Both as a cooperating partner and as an agent of FHWA, ADOT is responsible for the planning, design, construction and maintenance of the State Highway System within Arizona.</p> <p>As the management agency for public lands, the BLM retains responsibility for non-highway activities (i.e., for actions not undertaken under Title 23). The BLM has an oversight responsibility within easements relinquished to FHWA to monitor project implementation and maintenance activities to ensure environmental requirements (Clean Water Act, Clean Air Act, National Pollutant Discharge Elimination System, etc.) and BLM Land Management Plan (LMP) objectives are being met. The BLM discusses perceived shortcomings with FHWA as the ultimate authority for lands within roadway easements.</p>
	Cooperating Agency	<p>“Cooperating Agency” means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in §1501.6. A state or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe may by agreement with the lead agency become a</p>	<p>The Council on Environmental Quality (CEQ) regulation recognizes that overlapping federal jurisdictions have different missions and, hence, regulations. This creates a dilemma when the regulations don’t fit together easily. The designated lead federal agency ordinarily is the agency responsible for the project, and therefore, its regulations have primacy. As a matter of course and per the CEQ regulations, other agencies are invited to participate in the decision process as cooperating agencies.</p>

WORDS THAT HAVE CAUSED CONFUSION

TOPIC	JARGON	DEFINITION	DISCUSSION
		<p>cooperating agency. (40 CFR 1508.5)</p> <p>Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it as a cooperating agency. (40 CFR 1501.7)</p>	
	Conformance with the BLM Land Management Plan	<p>Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it as a cooperating agency. (40 CFR 1501.7)</p>	<p>FHWA has a responsibility to ensure its project is not outside the LMP direction. For example, BLM's LMP provides for protection of the sonoran desert tortoise, which is not subject to the Endangered Species Act and therefore its protection is not a matter of law. As the lead agency, the FHWA ensures that the highway project designs provide for the protection of sonoran desert tortoise as prescribed in the BLM LMP.</p> <p>The CEQ regulation recognizes that there are overlapping federal jurisdictions and that each agency has a different mission and, hence, different regulations. This creates a dilemma when the regulations don't fit together easily. The designated lead federal agency ordinarily is the agency responsible for the project, and therefore, its regulations have primacy. Even so, the project must incorporate the needs of cooperating agencies.</p> <p>LMPs were developed by the BLM, after intensive public scoping, to provide a range of "zoning" options that describe appropriate uses of specific public lands. The BLM is required to manage the public lands as it committed to within its LMP – regardless the proponent - or it must amend the plan to provide consistency.</p>
Decision	Decision	<p>At the time of its decision (§ 1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The</p>	<p>The CEQ uses the term "decision" very specifically to refer to the document that formally approves a project made following consideration of the data assembled in the NEPA analysis for the project. The decision is required to include several specific elements.</p>

WORDS THAT HAVE CAUSED CONFUSION

TOPIC	JARGON	DEFINITION	DISCUSSION
		record ... shall: a) state what the decision was. b) identify all alternatives considered ... c) state whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not why they were not. A monitoring and enforcement program shall be adopted and summarized wherever applicable for any mitigation. 40 CFR 1505.2.	<p>All three agencies adhere to the CEQ definition in discussions relative to NEPA.</p> <p>The BLM maintains formal use of the word “decision” by restricting its use to identified actions that can be appealed (where an authorizing signature is applied). The BLM grant through FHWA to ADOT of land needed for a project (i.e., ROW via Title 23) is not a BLM decision and is not appealable.</p> <p>Conversely, the FHWA uses the strict NEPA sense for “decision” within the context of NEPA documents, but uses the term informally to discuss resolutions of design issues resolved within the context of the NEPA decision.</p> <p>FHWA makes its NEPA decisions on corridors rather than on alignments. Therefore, unless the corridor changes (i.e., a design would exceed the ROW, there is a change in mitigation, etc.) the alignment may be modified without a new NEPA decision. For example, both bridges and box culverts can be designed to accommodate large game wildlife. Either could be substituted during design and remain within the scope of the NEPA decision. However, a culvert would likely not accommodate large game wildlife and could not be substituted for a bridge during design if the NEPA document prescribed a bridge to promote large game wildlife crossing at that location. A modified (new) NEPA decision would have to be made.</p>
	Determination	A Determination of NEPA Adequacy (DNA) is a conclusion by BLM that NEPA documentation previously prepared by the BLM fully covers a proposed action (site specific) and no additional analysis is needed.	BLM’s regulations also allow the use of a DNA, which is not a “new, formal NEPA decision.” Rather, the DNA is a finding that a specific activity or action was disclosed and addressed within the original NEPA decision. As such, it is similar to FHWA’s “Supplemental Information Report.”
	Mitigation /mitigating the proposal / pre-mitigation	<p>“Mitigation” includes:</p> <p>(a) Avoiding the impact altogether by not taking a certain action or parts of an action.</p> <p>(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.</p> <p>(c) Rectifying the impact by repairing, rehabilitating, or restoring the</p>	<p>FHWA and ADOT prefer to develop mitigation measures as an integral part of each alternative. This results in the disclosure of a “net impact to the environment” in a straightforward discussion.</p> <p>Conversely, another approach is to develop an unmitigated alternative, identify all impacts, identify mitigation measures, identify the degree the mitigation measures mitigate the impact, and finally disclose the “net impact to the environment.” FHWA and ADOT consider the</p>

WORDS THAT HAVE CAUSED CONFUSION

TOPIC	JARGON	DEFINITION	DISCUSSION
		affected environment. (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action. (e) Compensating for the impact by replacing or providing substitute resources or environments. (CFR 1508.20)	latter approach to be both confusing and an unrealistic portrayal of the alternative being proposed.
Analysis Process	Corridor	A strip of land between two termini within which traffic, topography, environment, and other characteristics are evaluated for transportation purposes. (American Association of State Highway Transportation Officials (AASHTO))	<p>Outside FHWA and ADOT, the terms “alignment” and “corridor” are often perceived as equivalent. This has caused some difficulty in communications. A corridor is a generalized location where road alignments are feasible.</p> <p>With some qualifications, the FHWA and ADOT NEPA process will provide an environmental clearance for the entire corridor. Corridors are wide enough to accommodate several different individual alignments. The design phase will establish the actual alignment through an iterative process that responds to the environmental clearance, AASHTO requirements, ADOT design criteria, district and Motor Vehicle Division requests, design team discussions, and other factors of varying influence.</p>
	Alternative	<p>e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment. (40 CFR 1500.2 (e))</p> <p>Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this</p>	<p>The NEPA regulations promulgated by FHWA recognize that the design phase for linear transportation projects have a very large cost. The regulations require the development of alternatives, but do not require the development of a “proposed action” against which to array alternatives. Therefore, in its NEPA documents the FHWA advocates the elimination of unreasonable alternatives as soon as feasible to concentrate emphasis on the best alternatives in design. One action alternative and one no-action alternative is considered normal.</p> <p>The NEPA regulations promulgated by BLM advocate the elimination of unreasonable alternatives as part of the alternative selection process, but advocates carrying all reasonable alternatives through the complete analysis. DOI regulations require the articulation of a “proposed action” to compare alternatives to. Therefore, two or more action alternatives and one no-action alternative is considered normal.</p>

WORDS THAT HAVE CAUSED CONFUSION

TOPIC	JARGON	DEFINITION	DISCUSSION
		<p>section agencies shall: a) rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated. b) ... c) ... d) ... e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference. f) ... (40 CFR 1502.14)</p> <p>d) Requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives ... (40 CFR 1505.1)</p> <p>It is the policy of the Administration that: ... b) alternative courses of action be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; of social, economic, and environmental impacts of the proposed transportation improvement ; and of national, state, and local environmental protection goals. (23 CFR 771.105)</p>	
	Significant	<p>“Significantly” as used in NEPA requires consideration of both context and intensity: a) context. b) intensity 1) – 10). (40 CFR 1508.27)</p> <p>“Finding of no significant impact: means a document by a Federal agency briefly</p>	Due to its specific meaning under NEPA, the word “significantly” is not used loosely by federal agencies.

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		presenting the reasons why an action, not otherwise excluded (§ 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. (40 CFR 1508.13)	
Design Process	Alignment	<p>Horizontal alignment – A combination of tangents, horizontal curves and spirals which defines the horizontal location of a roadway.</p> <p>Vertical Alignment – A combination of tangent grades and vertical curves which define the vertical location of a roadway. (ADOT)</p>	<p>Outside FHWA and ADOT, the terms “alignment” and “corridor” are often perceived as equivalent. This has caused some difficulty in communication. An alignment is a site-specific location for the road. FHWA and ADOT utilize NEPA regulations promulgated by the DOT, which were developed primarily to analyze linear transportation projects with consideration given to the planning and design processes these agencies use. These agencies consider the alignment to be an element that is created during the design phase, which occurs after the NEPA analysis phase. Therefore, in its NEPA documents the FHWA has adopted conventions that disclose project specifics less intricately than do BLM documents.</p> <p>NEPA implementation regulations promulgated by the Department of the Interior were developed primarily to analyze a wide variety of projects of BLM initiative as well as projects generated in the private sector which a proponent presents as an appropriate use of public lands under BLM regulation. The BLM regulations were developed to analyze a wide range of ground disturbing projects. It ordinarily has more site-specific information about the proposal and its effects. These regulation require the BLM to disclose “site-specific” impacts during the NEPA process. In its NEPA documents the BLM has adopted conventions that disclose project specifics more intricately than the FHWA’s documents. The NEPA documents completed by the FHWA for highway projects crossing public lands under BLM jurisdiction look different from NEPA documents created by the BLM for the projects it implements elsewhere on the public land it administers.</p>

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TOPIC	JARGON	DEFINITION	DISCUSSION
	Refinements / refining the alignment	c) Agencies: 1) shall prepare supplements to either draft or final environmental impact statements if: i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. (40 CFR 1502.9)	<p>The NEPA analysis identifies the right of way within which a generalized alignment will be placed and a facility designed. The actual design and cross section, as well as the construction plans, are developed through a series of iterations starting with the generalized alignment. The generalized alignment is refined to the final alignment as more site-specific survey data and agency input is acquired and design criteria, AASHTO requirements, etc. are incorporated in more detail than is feasible during the NEPA analysis. The iterations must implement the environmental clearance and remain within the scope of the analysis. If the iterations exceed the scope of the analysis - for instance, if the alignment were to go outside the ROW - additional NEPA analysis is required.</p> <p>In it's NEPA documents the BLM has adopted conventions that disclose project specifics more intricately than the FHWA's documents. For example, the BLM would prefer that a more specific alignment be identified as part of the NEPA process than FHWA considers feasible for large highway projects. A fixed alignment would allow more intricate discussion of impacts during the analysis, similar to discussions done under the BLM regulation.</p>
Requirement / wants		<p>Requirement – A requisite or essential condition</p> <p>Want – to have or feel a need or desire</p>	<p>A “requirement” is either regulatory or the official, written agency policy and is enforceable. A “want” is a desire and is permissive.</p> <p>The CEQ regulations promote cost control in numerous places. Some of the more well known relate to paperwork reduction by confining the analysis to the essential issues to sharply define the issues and provide a clear basis for choice among options. (40 CFR 1500.1; 40 CFR 1500.2 (f); 40 CFR 1500.4; 40 CFR 1502.14; etc.).</p> <p>FHWA and ADOT representatives have questioned whether some specific items introduced by some BLM representatives as being “required by the LMP” are actually necessary to meet the objectives of the LMP or are merely wants that are not necessary to achieve conditions targeted by the LMP.</p> <p>BLM representatives propose project design and mitigation measures similar to those required on similar projects generated internally or proposed by business or a private party.</p>